

Introduced by Senator Romero

February 24, 2006

An act to amend Sections 667, 667.1, 1170.12, and 1170.125 of, and to add Section 1170.126 to, the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1642, as introduced, Romero. Sentencing: three strikes.

Existing law, as amended by initiative statutes, and commonly referred to as the “three strikes” law, provides for various sentencing enhancements for persons convicted of one or more felonies and who have one or more prior felony convictions for felonies defined as either “serious” or “violent.” Existing law provides that for a conviction of a felony with one prior conviction for a serious or violent felony the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction. Existing law provides that a person convicted of a felony who has 2 prior convictions for a serious or violent felony is subject to an indeterminate term of life with a minimum term of the greatest of 3 times the term otherwise provides, 25 years, or the other applicable term.

This bill would provide that if the current felony is not a serious or violent felony the person would be sentenced to the enhancement under the 3 strikes provisions that is applicable to a person with one prior conviction. These provisions would not apply if the current felony is a drug offense, a felony sex offense, involved the use of firearms or deadly weapons, or involved great bodily injury, or if any of the prior offenses was a sexually violent offense, any of certain sex offenses involving a child, homicide, or a serious or violent felony punishable by life imprisonment or death.

The bill would provide a procedure for qualified persons to file a writ of habeas corpus for the purpose of being resentenced to a lesser sentence pursuant to the provisions of the bill. The bill would make other technical amendments.

The bill would provide that it would become effective only when submitted to, and approved by, the voters.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited as,
2 the Three Strikes Reform Act of 2006.

3 SEC. 2. The Legislature finds and declares the following:

4 (a) Proposition 184 (the “Three Strikes” law) was
5 overwhelmingly approved in 1994 with the intent of protecting
6 law-abiding citizens by enhancing the sentences for a repeat
7 offender who had committed serious or violent felonies, or both.

8 (b) Proposition 184 did not apply exclusively to enhance the
9 sentences for serious or violent felonies committed by repeat
10 offenders with prior convictions for serious or violent felonies.

11 (c) Proposition 184 did not establish reasonable criteria for
12 limiting criminal acts that would be prosecuted as third strikes.

13 (d) Since its enactment, Proposition 184 has been used to
14 enhance as third strikes, thousands of crimes committed by
15 recidivists that were not serious or violent felonies, or both, at an
16 excessive annual cost to taxpayers.

17 (e) It is the intent of the Legislature in enacting this measure to
18 protect the people from repeat offenders who continue to commit
19 serious or violent felonies, and to continue to provide greater
20 punishment for those previously convicted of serious or violent
21 felonies, or both, while providing reasonable criteria for felonies
22 that may be prosecuted as third strikes.

23 SEC. 3. Section 667 of the Penal Code is amended to read:

24 667. (a) (1) In compliance with subdivision (b) of Section
25 1385, any person convicted of a serious felony who previously
26 has been convicted of a serious felony in this state or of any
27 offense committed in another jurisdiction which includes all of
28 the elements of any serious felony, shall receive, in addition to
29 the sentence imposed by the court for the present offense, a

1 five-year enhancement for each such prior conviction on charges
2 brought and tried separately. The terms of the present offense and
3 each enhancement shall run consecutively.

4 (2) This subdivision shall not be applied when the punishment
5 imposed under other provisions of law would result in a longer
6 term of imprisonment. There is no requirement of prior
7 incarceration or commitment for this subdivision to apply.

8 (3) The Legislature may increase the length of the
9 enhancement of sentence provided in this subdivision by a statute
10 passed by majority vote of each house thereof.

11 (4) As used in this subdivision, “serious felony” means a
12 serious felony listed in subdivision (c) of Section 1192.7.

13 (5) This subdivision shall not apply to a person convicted of
14 selling, furnishing, administering, or giving, or offering to sell,
15 furnish, administer, or give to a minor any
16 methamphetamine-related drug or any precursors of
17 methamphetamine unless the prior conviction was for a serious
18 felony described in subparagraph (24) of subdivision (c) of
19 Section 1192.7.

20 (b) It is the intent of the Legislature in enacting subdivisions
21 (b) to (i), inclusive, to ensure longer prison sentences and greater
22 punishment for those who commit a felony and have been
23 previously convicted of serious and/or violent felony offenses.

24 (c) Notwithstanding any other law, if a defendant has been
25 convicted of a felony and it has been pled and proved that the
26 defendant has one or more prior *serious and/or violent* felony
27 convictions as defined in subdivision (d), the court shall adhere
28 to each of the following:

29 (1) There shall not be an aggregate term limitation for
30 purposes of consecutive sentencing for any subsequent felony
31 conviction.

32 (2) Probation for the current offense shall not be granted, nor
33 shall execution or imposition of the sentence be suspended for
34 any prior offense.

35 (3) The length of time between the prior *serious and/or violent*
36 felony conviction and the current felony conviction shall not
37 affect the imposition of sentence.

38 (4) There shall not be a commitment to any other facility other
39 than the state prison. Diversion shall not be granted nor shall the
40 defendant be eligible for commitment to the California

1 Rehabilitation Center as provided in Article 2 (commencing with
2 Section 3050) of Chapter 1 of Division 3 of the Welfare and
3 Institutions Code.

4 (5) The total amount of credits awarded pursuant to Article 2.5
5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
6 3 shall not exceed one-fifth of the total term of imprisonment
7 imposed and shall not accrue until the defendant is physically
8 placed in the state prison.

9 (6) If there is a current conviction for more than one felony
10 count not committed on the same occasion, and not arising from
11 the same set of operative facts, the court shall sentence the
12 defendant consecutively on each count pursuant to subdivision
13 (e).

14 (7) If there is a current conviction for more than one serious or
15 violent felony as described in paragraph (6), the court shall
16 impose the sentence for each conviction consecutive to the
17 sentence for any other conviction for which the defendant may be
18 consecutively sentenced in the manner prescribed by law.

19 (8) Any sentence imposed pursuant to subdivision (e) will be
20 imposed consecutive to any other sentence which the defendant
21 is already serving, unless otherwise provided by law.

22 (d) Notwithstanding any other law and for the purposes of
23 subdivisions (b) to (i), inclusive, a prior conviction of a *serious*
24 *and/or violent* felony shall be defined as:

25 (1) Any offense defined in subdivision (c) of Section 667.5 as
26 a violent felony or any offense defined in subdivision (c) of
27 Section 1192.7 as a serious felony in this state. The
28 determination of whether a prior conviction is a prior *serious*
29 *and/or violent* felony conviction for purposes of subdivisions (b)
30 to (i), inclusive, shall be made upon the date of that prior
31 conviction and is not affected by the sentence imposed unless the
32 sentence automatically, upon the initial sentencing, converts the
33 felony to a misdemeanor. None of the following dispositions
34 shall affect the determination that a prior conviction is a prior
35 *serious and/or violent* felony for purposes of subdivisions (b) to
36 (i), inclusive:

37 (A) The suspension of imposition of judgment or sentence.

38 (B) The stay of execution of sentence.

1 (C) The commitment to the State Department of Health
2 Services as a mentally disordered sex offender following a
3 conviction of a felony.

4 (D) The commitment to the California Rehabilitation Center or
5 any other facility whose function is rehabilitative diversion from
6 the state prison.

7 (2) A *prior* conviction in another jurisdiction for an offense
8 that, if committed in California, is punishable by imprisonment in
9 the state prison—~~A shall constitute a prior conviction of a~~
10 particular *serious and/or violent* felony—~~shall include a if the prior~~
11 conviction in ~~another~~ *the other* jurisdiction is for an offense that
12 includes all of the elements of the particular *violent* felony as
13 defined in subdivision (c) of Section 667.5 or *serious felony* as
14 defined in subdivision (c) of Section 1192.7.

15 (3) A prior juvenile adjudication shall constitute a prior
16 *serious and/or violent* felony conviction for purposes of sentence
17 enhancement if:

18 (A) The juvenile was 16 years of age or older at the time he or
19 she committed the prior offense.

20 (B) The prior offense is listed in subdivision (b) of Section
21 707 of the Welfare and Institutions Code or described in
22 paragraph (1) or (2) as a *serious and/or violent* felony.

23 (C) The juvenile was found to be a fit and proper subject to be
24 dealt with under the juvenile court law.

25 (D) The juvenile was adjudged a ward of the juvenile court
26 within the meaning of Section 602 of the Welfare and Institutions
27 Code because the person committed an offense listed in
28 subdivision (b) of Section 707 of the Welfare and Institutions
29 Code.

30 (e) For purposes of subdivisions (b) to (i), inclusive, and in
31 addition to any other enhancement or punishment provisions
32 which may apply, the following shall apply where a defendant
33 has ~~a one or more prior serious and/or violent felony conviction~~
34 *convictions*:

35 (1) If a defendant has one prior *serious and/or violent* felony
36 conviction that has been pled and proved, the determinate term or
37 minimum term for an indeterminate term shall be twice the term
38 otherwise provided as punishment for the current felony
39 conviction.

1 (2) (A) ~~If~~ *Except as provided in subparagraph (C), if a*
2 *defendant has two or more prior serious and/or violent felony*
3 *convictions as defined in subdivision (d) that have been pled and*
4 *proved, the term for the current felony conviction shall be an*
5 *indeterminate term of life imprisonment with a minimum term of*
6 *the indeterminate sentence calculated as the ~~greater~~ greatest of:*

7 (i) *Three times the term otherwise provided as punishment for*
8 *each current felony conviction subsequent to the two or more*
9 *serious and/or violent prior felony convictions.*

10 (ii) *Imprisonment in the state prison for 25 years.*

11 (iii) *The term determined by the court pursuant to Section*
12 *1170 for the underlying conviction, including any enhancement*
13 *applicable under Chapter 4.5 (commencing with Section 1170) of*
14 *Title 7 of Part 2, or any period prescribed by Section 190 or*
15 *3046.*

16 (B) *The indeterminate term described in subparagraph (A)*
17 *shall be served consecutive to any other term of imprisonment*
18 *for which a consecutive term may be imposed by law. Any other*
19 *term imposed subsequent to any indeterminate term described in*
20 *subparagraph (A) shall not be merged therein but shall*
21 *commence at the time the person would otherwise have been*
22 *released from prison.*

23 (C) *If a defendant has two or more prior serious and/or*
24 *violent felony convictions, as defined in subdivision (d) that have*
25 *been plead and proved, and the current offense is not a serious*
26 *or violent felony as defined in subdivision (d), the defendant shall*
27 *be sentenced pursuant to paragraph (1) of subdivision (e), unless*
28 *the prosecution pleads and proves any of the following:*

29 (i) *The current offense is a controlled substance charge, in*
30 *which an allegation under Section 11370.4 or 11379.8 of the*
31 *Health and Safety Code was admitted or found true.*

32 (ii) *The current offense is a felony sex offense, defined in*
33 *subdivision (d) of Section 261.5 or Section 262, or listed in*
34 *subparagraph (A) of paragraph (2) of subdivision (a) of Section*
35 *290, except for Sections 266, 285, paragraph (1) of subdivision*
36 *(b) and subdivision (e) of Section 286, and paragraph (1) of*
37 *subdivision (b) and subdivision (e) of Section 288a.*

38 (iii) *During the commission of the current offense, the*
39 *defendant used a firearm, was armed with a firearm or deadly*

1 *weapon, or intended to cause great bodily injury to another*
2 *person.*

3 *(iv) The defendant suffered a prior conviction, as defined in*
4 *subdivision (d) for any of the following serious and/or violent*
5 *felonies:*

6 *(I) A “sexually violent offense” as defined in subdivision (b) of*
7 *Section 6600 of the Welfare and Institutions Code.*

8 *(II) Oral copulation with a child who is under 14 years of age,*
9 *and who is more than 10 years younger than he or she, as*
10 *defined in Section 288a, sodomy with a child who is under 14*
11 *years of age and who is more than 10 years younger than he or*
12 *she, as defined in Section 286, or sexual penetration with a child*
13 *who is under 14 years of age, and who is more than 10 years*
14 *younger than he or she, as defined in Section 289.*

15 *(III) A lewd or lascivious act involving a child under 14 years*
16 *of age in violation of Section 288.*

17 *(IV) Any homicide offense defined in Sections 187 to 191.5,*
18 *inclusive.*

19 *(V) Any serious or violent felony offense punishable by life*
20 *imprisonment or death.*

21 *(f) (1) Notwithstanding any other law, subdivisions (b) to (i),*
22 *inclusive, shall be applied in every case in which a defendant has*
23 *a prior serious and/or violent felony conviction as defined in*
24 *subdivision (d). The prosecuting attorney shall plead and prove*
25 *each prior serious and/or violent felony conviction except as*
26 *provided in paragraph (2).*

27 *(2) The prosecuting attorney may move to dismiss or strike a*
28 *prior serious and/or violent felony conviction allegation in the*
29 *furtherance of justice pursuant to Section 1385, or if there is*
30 *insufficient evidence to prove the prior serious and/or violent*
31 *conviction. If upon the satisfaction of the court that there is*
32 *insufficient evidence to prove the prior serious and/or violent*
33 *felony conviction, the court may dismiss or strike the allegation.*

34 *(g) Prior serious and/or violent felony convictions shall not be*
35 *used in plea bargaining as defined in subdivision (b) of Section*
36 *1192.7. The prosecution shall plead and prove all known prior*
37 *serious and/or violent felony convictions and shall not enter into*
38 *any agreement to strike or seek the dismissal of any prior serious*
39 *and/or violent felony conviction allegation except as provided in*
40 *paragraph (2) of subdivision (f).*

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on ~~June 30, 1993~~ November 8, 2006.

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 4. Section 667.1 of the Penal Code is amended to read:

667.1. Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after the effective date of this act, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they existed on ~~the effective date of this act, including amendments made to those statutes by this act~~ November 8, 2006.

SEC. 5. Section 1170.12 of the Penal Code is amended to read:

1170.12. (a) Notwithstanding any other provision of law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *serious and/or violent* felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California

1 Rehabilitation Center as provided in Article 2 (commencing with
2 Section 3050) of Chapter 1 of Division 3 of the Welfare and
3 Institutions Code.

4 (5) The total amount of credits awarded pursuant to Article 2.5
5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
6 3 shall not exceed one-fifth of the total term of imprisonment
7 imposed and shall not accrue until the defendant is physically
8 placed in the state prison.

9 (6) If there is a current conviction for more than one felony
10 count not committed on the same occasion, and not arising from
11 the same set of operative facts, the court shall sentence the
12 defendant consecutively on each count pursuant to this section.

13 (7) If there is a current conviction for more than one serious or
14 violent felony as described in paragraph (6) of this subdivision,
15 the court shall impose the sentence for each conviction
16 consecutive to the sentence for any other conviction for which
17 the defendant may be consecutively sentenced in the manner
18 prescribed by law.

19 (8) Any sentence imposed pursuant to this section will be
20 imposed consecutive to any other sentence which the defendant
21 is already serving, unless otherwise provided by law.

22 (b) Notwithstanding any other provision of law and for the
23 purposes of this section, a prior conviction of a *serious and/or*
24 *violent* felony shall be defined as:

25 (1) Any offense defined in subdivision (c) of Section 667.5 as
26 a violent felony or any offense defined in subdivision (c) of
27 Section 1192.7 as a serious felony in this state. The
28 determination of whether a prior conviction is a prior *serious*
29 *and/or violent* felony conviction for purposes of this section shall
30 be made upon the date of that prior conviction and is not affected
31 by the sentence imposed unless the sentence automatically, upon
32 the initial sentencing, converts the felony to a misdemeanor.
33 None of the following dispositions shall affect the determination
34 that a prior conviction is a prior *serious and/or violent* felony for
35 purposes of this section:

36 (A) The suspension of imposition of judgment or sentence.

37 (B) The stay of execution of sentence.

38 (C) The commitment to the State Department of Health
39 Services as a mentally disordered sex offender following a
40 conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A *prior* conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. ~~A shall constitute a prior conviction of a particular serious and/or violent felony shall include a if the prior conviction in another the other jurisdiction is for an offense that includes all of the elements of the particular violent felony as defined in subdivision (c) of Section 667.5 or serious felony as defined in subdivision (c) of Section 1192.7.~~

(3) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if:

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense, and

(B) The prior offense is

(i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or

(ii) listed in this subdivision as a *serious and/or violent* felony, and

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(c) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has ~~a one or more prior serious and/or violent felony conviction~~ convictions:

(1) If a defendant has one prior *serious and/or violent* felony conviction *as defined in subdivision (b)* that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2) (A) ~~If Except as provided in subparagraph (C), if a defendant has two or more prior serious and/or violent felony convictions, as defined in paragraph (1) of subdivision (b), that~~

1 have been pled and proved, the term for the current felony
2 conviction shall be an indeterminate term of life imprisonment
3 with a minimum term of the indeterminate sentence calculated as
4 the ~~greater~~ *greatest* of:

5 (i) ~~three~~ *Three* times the term otherwise provided as
6 punishment for each current felony conviction subsequent to the
7 two or more prior *serious and/or violent* felony convictions; ~~or~~.

8 (ii) ~~twenty-five~~ *Twenty-five* years ~~or~~.

9 (iii) ~~the~~ *The* term determined by the court pursuant to Section
10 1170 for the underlying conviction, including any enhancement
11 applicable under Chapter 4.5 (commencing with Section 1170) of
12 Title 7 of Part 2, or any period prescribed by Section 190 or
13 3046.

14 (B) The indeterminate term described in subparagraph (A) of
15 paragraph (2) of this subdivision shall be served consecutive to
16 any other term of imprisonment for which a consecutive term
17 may be imposed by law. Any other term imposed subsequent to
18 any indeterminate term described in subparagraph (A) of
19 paragraph (2) of this subdivision shall not be merged therein but
20 shall commence at the time the person would otherwise have
21 been released from prison.

22 (C) *If a defendant has two or more prior serious and/or*
23 *violent felony convictions, as defined in subdivision (b) that have*
24 *been pled and proved, and the current offense is not a felony as*
25 *described in paragraph (1) of subdivision (b), the defendant shall*
26 *be sentenced pursuant to paragraph (1) of subdivision (c), unless*
27 *the prosecution pleads and proves any of the following:*

28 (i) *The current offense is a controlled substance charge, in*
29 *which an allegation under Section 11370.4 or 11379.8 of the*
30 *Health and Safety Code was admitted or found true.*

31 (ii) *The current offense is a felony sex offense, defined in*
32 *subdivision (d) of Section 261.5 or Section 262, or listed in*
33 *subparagraph (A) of paragraph (2) of subdivision (a) of Section*
34 *290, except for Sections 266, 285, paragraph (1) of subdivision*
35 *(b) and subdivision (e) of Section 286, and paragraph (1) of*
36 *subdivision (b) and subdivision (e) of Section 288a.*

37 (iii) *During the commission of the current offense, the*
38 *defendant used a firearm, was armed with a firearm or deadly*
39 *weapon, or intended to cause great bodily injury to another*
40 *person.*

1 (iv) *The defendant suffered a prior conviction, for any of the*
2 *following felonies:*

3 (I) *A “sexually violent offense” as defined in subdivision (b) of*
4 *Section 6600 of the Welfare and Institutions Code.*

5 (II) *Oral copulation with a child who is under 14 years of age,*
6 *and who is more than 10 years younger than he or she, as*
7 *defined in Section 288a, sodomy with a child who is under 14*
8 *years of age and who is more than 10 years younger than he or*
9 *she, as defined in Section 286, or sexual penetration with a child*
10 *who is under 14 years of age, and who is more than 10 years*
11 *younger than he or she, as defined in Section 289.*

12 (III) *A lewd or lascivious act involving a child under 14 years*
13 *of age in violation of Section 288.*

14 (IV) *Any homicide offense defined in Sections 187 to 191.5,*
15 *inclusive.*

16 (V) *Any serious and/or violent felony offense punishable by*
17 *life imprisonment or death.*

18 (d) (1) *Notwithstanding any other provision of law, this*
19 *section shall be applied in every case in which a defendant has-a*
20 *one or more prior serious and/or violent felony—conviction*
21 *convictions, or both, as defined in this section. The prosecuting*
22 *attorney shall plead and prove each prior serious and/or violent*
23 *felony conviction except as provided in paragraph (2).*

24 (2) *The prosecuting attorney may move to dismiss or strike a*
25 *prior serious and/or violent felony conviction allegation in the*
26 *furtherance of justice pursuant to Section 1385, or if there is*
27 *insufficient evidence to prove the prior serious and/or violent*
28 *felony conviction. If upon the satisfaction of the court that there*
29 *is insufficient evidence to prove the prior serious and/or violent*
30 *felony conviction, the court may dismiss or strike the allegation.*

31 (e) *Prior serious and/or violent felony convictions shall not be*
32 *used in plea bargaining, as defined in subdivision (b) of Section*
33 *1192.7. The prosecution shall plead and prove all known prior*
34 *serious and/or violent felony convictions and shall not enter into*
35 *any agreement to strike or seek the dismissal of any prior serious*
36 *and/or violent felony conviction allegation except as provided in*
37 *paragraph (2) of subdivision (d).*

38 (f) *If any provision of subdivisions (a) to (e) inclusive, or of*
39 *Section 1170.126, or the application thereof to any person or*
40 *circumstance is held invalid, that invalidity shall not affect other*

1 *provisions or applications of those subdivisions that can be given*
2 *effect without the invalid provision or application, and to this end*
3 *the provisions of those subdivisions are severable.*

4 *(g) The provisions of this section shall not be amended by the*
5 *Legislature except by statute passed in each house by rollcall*
6 *vote entered in the journal, two-thirds of the membership*
7 *concurring, or by a statute that becomes effective only when*
8 *approved by the electors.*

9 SEC. 6. Section 1170.125 of the Penal Code is amended to
10 read:

11 1170.125. Notwithstanding Section 2 of Proposition 184, as
12 adopted at the November 8, 1994 General Election, for all
13 offenses committed on or after the effective date of this act, all
14 references to existing statutes in Section 1170.12 *and 1170.126*
15 *are to those statutes as they existed on the effective date of this*
16 *act, including amendments made to those statutes by this act*
17 *November 8, 2006.*

18 SEC. 7. Section 1170.126 is added to the Penal Code, to read:

19 1170.126. (a) The resentencing provisions under this section
20 are intended to apply exclusively to persons presently serving an
21 indeterminate term of imprisonment pursuant to paragraph (2) of
22 subdivision (e) of Section 667 or paragraph (2) of subdivision (c)
23 of Section 1170.12, whose sentence under the Three Strikes
24 Reform Act of 2006 would not have been an indeterminate life
25 sentence.

26 (b) Subject to exclusions and limitations set forth below in
27 subdivisions (b) and (c), any person serving an indeterminate
28 term of life imprisonment imposed pursuant to paragraph (2) of
29 subdivision (e) of Section 667 or paragraph (2) of subdivision (c)
30 of Section 1170.12 upon conviction, whether by trial or plea, of a
31 felony or felonies that are not defined as serious and/or violent
32 felonies by subdivision (c) of Section 667.5 or subdivision (c) of
33 Section 1192.7, respectively, may file a petition for a writ of
34 habeas corpus, within two years after the effective date of the
35 Three Strikes Reform Act of 2006, before the trial court that
36 entered the judgment of conviction in his or her case, to request
37 resentencing in accordance with the provisions of subdivision (e)
38 of Section 667, or subdivision (c) of Section 1170.12, as those
39 statutes have been amended by the Three Strikes Reform Act of
40 2006.

1 (c) No person who is presently serving a term of imprisonment
2 for a “second strike” conviction imposed pursuant to paragraph
3 (1) of subdivision (e) of Section 667 or paragraph (1) of
4 subdivision (c) of Section 1170.12, shall be eligible for
5 resentencing under the provisions of this section.

6 (d) The petition for a writ of habeas corpus described in
7 subdivision (b) shall specify all the currently charged felonies
8 which resulted in the sentence under paragraph (2) of subdivision
9 (e) of Section 667 or paragraph (2) of subdivision (c) of Section
10 1170.12, or both, and shall also specify all of the prior
11 convictions alleged and proved under subdivision (d) of Section
12 667 or subdivision (b) of Section 1170.12 or both.

13 (e) A person who meets the requirements of subdivision (b)
14 may request appointment of counsel by sending to the sentencing
15 court, a written request for representation by counsel to prepare a
16 petition under this section and for purposes of resentencing.

17 (f) If the court determines that the person filing a petition for
18 writ of habeas corpus is eligible to be resentenced under the
19 criteria set forth in subdivision (b) and is not excluded by the
20 disqualifying factors in subparagraph (C) of paragraph (2) of
21 subdivision (e) of Section 667 and/or subparagraph (C) of
22 paragraph (2) of subdivision (c) of Section 1170.12, and if the
23 court, in its discretion, determines that relief is warranted, the
24 court shall resentence that persons in accordance with the three
25 strikes statutes as amended by the Three Strike Reform Act of
26 2006, unless another law provides for a longer sentence.

27 (g) Under no circumstances may resentencing under this act
28 result in the imposition of a term longer than the original
29 sentence.

30 (h) Notwithstanding subdivision (b) of Section 977, a
31 defendant petitioning for resentencing may waive his or her
32 appearance in court for the resentencing, provided that the
33 accusatory pleading is not amended at the resentencing, and that
34 no new trial or retrial of the individual will occur. The waiver
35 shall be in writing and signed by the defendant.

36 (i) If the judge that originally sentenced the defendant is not
37 available to resentence the defendant, the presiding judge may
38 designate another judge to rule on the defendant’s petition.

39 (j) Nothing in this section is intended to diminish or abrogate
40 any rights or remedies otherwise available to the defendant.

1 (k) Nothing in this section is intended to diminish or abrogate
2 the finality of judgments in any case not falling within the
3 purview of this act.

4 SEC. 8. The Three Strikes Reform Act of 2006 is an exercise
5 of the public power of the People of the State of California for
6 the protection of the health, safety, and welfare of the People of
7 the State of California, and shall be liberally construed to
8 effectuate those purposes.

9 SEC. 9. If any provision of this act, or the application thereof
10 to any person or circumstance, is held invalid, that invalidity
11 shall not affect any other provision or application of this act,
12 which can be given effect without the invalid provision or
13 application in order to effectuate the purposes of this act. To this
14 end, the provisions of this act are severable.

15 SEC. 10. Sections 1 to 9, inclusive, affect initiative statutes,
16 and shall become effective only when submitted to, and approved
17 by, the voters of California, pursuant to subdivision (c) of
18 Section 10 of Article II of the California Constitution.